

-2-

It is obvious from Mr. Werlinger's response that he deliberately abandoned the Bay City site to move the station to Houston and that he committed a material misrepresentation in stating on the STA application that " *Due to the loss of its currently licensed site,*". It is also clear that Mr. Werlinger willfully violated a direct order of the FCC, "*It was only after very careful consideration that Mr. Werlinger made the decision to disregard Mr. Vu's order.*".

It is unbelievable that the FCC has continued to allow Chameleon to operate from their STA site near Houston and continue to cause harmful interference to our coverage area. Chameleon should be ordered to return to their Bay City site until their 301 application and change of city of license request is properly considered before the Commission.

If the Commission continues to allow Chameleon to get away with it's abuses, it will set set some undeniable precedents for broadcasters. First, that a licensee can file false and misleading information with the commission in order to move their station to an STA site in a market they like. Second, that a licensee can simply ignore direct orders from the Commission because the Commission is powerless to do anything about it.

Sincerely,



Mark Whitehead

Chief Engineer KWHI - KTTX

CERTIFICATE OF SERVICE

I, Mark Whitehead, Chief Engineer for KWHI - KTTX Radio, hereby certify that I have this Twenty sixth day of August, 1995, sent copies of the foregoing "Letter to Larry Eads, Re: STA for KFCC- AM, Bay City, Texas" by first-class United States mail, postage prepaid, to:

Mr. Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 302
Washington, D.C. 20554

Mr. James Burtle
Chief, AM Branch
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 342
Washington, D.C. 20554

James P. Riley, Esq.
Fletcher, Heald et al.
1300 North Seventeenth Street Northwest,
Eleventh Floor
Rosslyn, Virginia 22209
Counsel to South Texas Broadcasting, Inc.

Mr. Donald Werlinger, President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099


Mark Whitehead

ORIGINAL

MM 96-173

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KAREN L. CASSER*
ANNE GOODWIN CRUMP*
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M. VERONICA PASTOR*
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JAMES P. RILEY
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KATHLEEN VICTORY*
HOWARD M. WEISS

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CONSULTANT FOR INTERNATIONAL AND
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SHELDON J. KRYS
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OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 694-50

September 1, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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SEP - 1 1995

Re: KFCC (AM)
Bay City, Texas

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Salem Communications Corporation and its wholly owned subsidiary, South Texas Broadcasting, Inc., licensee of Station KENR, Houston, Texas (collectively "Salem") hereby withdraws its request for cancellation of the Special Temporary Authority issued to Chameleon Radio Corporation for the operation of KFCC (AM), Bay City, Texas. The request was made in South Texas's letter dated May 23, 1995 and was followed by another letter dated June 20, 1995. Those letters should be dismissed and no further consideration given to the request for cancellation of the STA.

Furthermore, Salem is aware of the currently pending application (BP950804AC) by KFCC requesting changes in its facilities. Salem does not object to the granting of facilities requested by KFCC in the above-mentioned application.

Yours very truly,

James P. Riley
James P. Riley
Counsel for
Salem Communications Corporation

cc: Mr. Larry D. Eads
Chief, Audio Services Division, FCC

RECEIVED

SEP 5 3 36 PM '95

AM BRANCH



KFCC

1270 AM

Chameleon Radio Corporation

(713) 575-1270 Fax: (713) 564-8653

10865 Rockley Road Houston, TX 77099 P.O. Box 1235 Stafford, TX 77497

Houston's Unique Talk and International Language Station

August 30, 1995

Mr. Larry D. Eads
Chief, Audio Services Division
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Re: Letter of Inquiry 180B3-KDY
KFCC (AM), Bay City, Texas

Dear Mr. Eads:

In a letter dated August 4, 1995 and attachments to that letter, Chameleon Radio Corporation ("Chameleon"), licensee of Station KFCC, Bay City, Texas undertook to respond to the FCC's Letter of Inquiry issued to it dated July 25, 1995.

In its response dated August 4, 1995, Chameleon made a number of references to Salem Communications Corporation and its wholly owned subsidiary South Texas Broadcasting, Inc. (collectively "Salem"), licensee of Station KENR, Houston, Texas. All references to Salem in Chameleon's August 4 response are hereby withdrawn in their entirety. It is the intent of Chameleon that no consideration be given by the Commission to any statement concerning Salem made in the August 4 response.

This letter is not intended to in any other way alter Chameleon's request for an extension of its STA pending review of its application to make the currently operating STA site permanent and to make major changes in the facilities of KFCC.

Respectfully Submitted,

Don Werlinger, President
Chameleon Radio Corporation

NN 96-173

ANN BAVENDER*
JAMES A. CASEY
KAREN L. CASSEY*
ANNE GOODWIN CRUMP*
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OF COUNSEL
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WRITER'S NUMBER
(703) 812-450

September 1, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

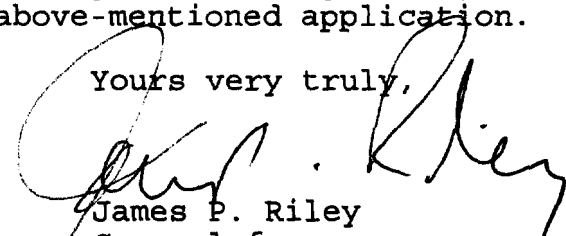
Re: KFCC (AM)
Bay City, Texas

Dear Mr. Caton:

Salem Communications Corporation and its wholly owned subsidiary, South Texas Broadcasting, Inc., licensee of Station KENR, Houston, Texas (collectively "Salem") hereby withdraws its request for cancellation of the Special Temporary Authority issued to Chameleon Radio Corporation for the operation of KFCC (AM), Bay City, Texas. The request was made in South Texas's letter dated May 23, 1995 and was followed by another letter dated June 20, 1995. Those letters should be dismissed and no further consideration given to the request for cancellation of the STA.

Furthermore, Salem is aware of the currently pending application (BP950804AC) by KFCC requesting changes in its facilities. Salem does not object to the granting of facilities requested by KFCC in the above-mentioned application.

Yours very truly,


James P. Riley
Counsel for
Salem Communications Corporation

cc: Mr. Larry D. Eads
Chief, Audio Services Division, FCC

FCC MAIL SECTION

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FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

SEP 8 1995

**In Reply Refer To:
1800B3-KDY**

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger,
President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099

In re: KFCC(AM) Bay City, Texas
(formerly KIOX(AM))
Notice of Special Temporary
Authority Cancellation

Dear Mr. Werlinger:

We have on file Chameleon Radio Corporation's ("Chameleon")¹ August 4, 1995 request for extension of Special Temporary Authority ("STA") to operate KFCC(AM), Bay City, Texas,² at variance from its licensed parameters.³ As set forth below, we deny Chameleon's request for extension.

Background. On April 18, 1995, the Commission approved an application assigning

¹ Don Werlinger ("Werlinger") is listed in the Commission's records as President of Chameleon.

² Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

³ Two Houston-area licensees, South Texas Broadcasting, Inc. ("South Texas") and Tom S. Whitehead ("Whitehead") have filed objections to the STA, alleging, among other things, that the facilities specified in the subject STA cause interference to their respective stations. Both objections remain pending. By letter dated September 1, 1995, South Texas requested withdrawal of its objection.

KFCC(AM) from Landrum Enterprises ("Landrum") to Chameleon (BAL-950216EA). On April 21, 1995, Chameleon, filed the subject request for STA. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the above-noted "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.⁴ After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime because of potential interference that was called to the staff's attention. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Recision Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

By letter dated July 25, 1995, the Chief, Audio Services Division requested Chameleon to respond to several questions regarding the circumstances giving rise to Chameleon's necessity for STA, facts concerning KFCC(AM)'s licensed facility and construction efforts taken pursuant to the STA. See July 25, 1995 Letter From Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger ("Inquiry Letter"). The Inquiry Letter requested

⁴ The May 5th letter was incorrect. The actual site being requested by Chameleon was 80 km from its licensed site. Because Chameleon's amended Figure E-1 depicted an existing 180' foot tower as being "0.25 km from [KFCC(AM)'s] licensed site" the staff inadvertently assumed that the proposed STA site was actually only 0.25 km from the Bay City Site.

Werlinger to:

1. Provide specific details concerning: (a) the circumstances under which Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.
2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.
3. Provide: (a) the name, address and telephone number of the [Harris County Site] owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.
4. Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).

After not having received a request for extension of the STA or a timely response to the Inquiry Letter, the Commission staff issued a letter on August 11, 1995 informing Chameleon that the STA had been terminated ("Rescission Letter 2").⁵ On August 11, 1995, Chameleon faxed a date-stamped copy of its extension request and response to the Inquiry Letter ("Response Letter"). Chameleon stated that a copy of this letter had been mailed to the Commission on August 4, 1995.⁶ By letter dated August 11, 1995, the Commission staff

⁵ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

⁶ On August 25, 1995, Whitehead faxed a reply to the Response Letter to the Chief, Audio Services ("Reply"). In that letter, Whitehead challenges Chameleon's statements of fact contained in the Response Letter and renews his request for termination of the STA. We will consider the issues raised by the Reply and incorporate those allegations with his earlier-filed

stayed Rescission Letter 2 pending study of the material submitted in the Response Letter.⁷ Meanwhile, on August 4, 1995, Chameleon had filed an application on FCC Form 301 to change KFCC(AM)'s community of license from Bay City, Texas, to Missouri City, Texas, and to modify the station's facilities to operate from the Harris County Site.

With respect to the specific questions identified above, the Response Letter provides the following:

(1) Question 1: Chameleon provides no further information to support its claim in the STA request that it needed to relocate the KFCC(AM) transmitter "[d]ue to the loss of its currently licensed site." Chameleon also does not discuss its present legal right of access to the Bay City Site. Additionally, the Response Letter does not address the present status of KFCC(AM)'s licensed facility at the Bay City Site or any technical changes, if any, that may have taken place at that site. Furthermore, Chameleon does not identify the current location of the KFCC(AM) main studio. Chameleon's only responsive statements regarding the STA are: (1) that it was "making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston" Response Letter at 17; and (2) that it "has gone to the outer limits in dealing with the Commission's Rules regarding Special Temporary Authorization. . . ." Response Letter at 19.

(2) Question 2: Chameleon provides no information indicating that it had considered any other site by which KFCC(AM) could maintain its presently licensed service to Bay City.

(3) Question 3: Chameleon states that the tower is owned by Mr. Joe McClish of Economy RF Construction Company, an Austin Texas Communication Company. Response Letter at 10. Chameleon indicates that Mr. McClish, in the course of an April 26, 1995 telephone conversation, expressed his interest in owning the tower and agreed to erect it before May 1, 1995. *Id.* Chameleon also states that none of its funds were expended for the tower's construction and that no "broadcast equipment was placed on the site until after the grant of the STA." *Id.* Chameleon reports that installation of broadcast equipment on the site began immediately upon grant of the STA and was completed by May 7, 1995. *Id.* Chameleon contends that this tower does not require FAA approval. *Id.* Chameleon does not, however, submit a copy of the FAA filing discussed in its April 21, 1995 STA request.

(4) Question 4: Chameleon states that the closing of the assignment from Landrum occurred on April 20, 1995.

Discussion. Based upon our careful review of the Response Letter, we conclude that

objection noted above.

⁷ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

Chameleon's April 21, 1995 stated basis for the STA -- "loss of its currently licensed site" -- is not supported by the facts in the record. Our policy is to require that the site "loss" be beyond the applicant's control before granting STA.⁸ Based upon material submitted in the Response Letter, Chameleon appears to have voluntarily abandoned its licensed site, and its licensed Bay City, Texas, broadcast service, in order to fulfill identified contractual obligations. In the Response Letter, Chameleon discusses in great detail a Houston licensee's decision to terminate a programming agreement made between the licensee's predecessor and a Chameleon-affiliated programming supplier.⁹ Under this agreement, Chameleon had supplied programming produced by various international broadcasters to that licensee's Houston station. Upon receiving a notice of the agreement's termination from the licensee, Chameleon "moved with all haste toward finding an acceptable transmitter site in southwest Houston to which it could move." Response Letter at 9. The "need" for an acceptable Houston broadcast signal thus appears to have formed the basis for Chameleon's STA request rather than a "loss" of site that was beyond Chameleon's control.¹⁰ Chameleon's contractual obligations to programmers seeking a Houston broadcast service do not provide a basis for granting STA that deprives Bay City, Texas, of a licensed service that it has enjoyed for more than forty years.

We find that Chameleon's use of STA to introduce a new broadcast service to Houston, Texas is both a violation of our STA policies and the licensing procedures of the Communications Act of 1934, as amended (the "Act"). Section 309 of the Act provides that the Commission may not grant an application for facility modifications of the type represented by Chameleon's STA until the Commission staff has examined the subject application, provided a public notice of the acceptance of the application for filing and allowed a thirty-

⁸ Section 73.1635(a) of the Commission's Rules provides for the issuance of an "STA to a licensee to permit the operation of a broadcast facility for a limited period at a specific variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station." 47 C.F.R. §1635(a). Any STA request must "fully describe the proposed operation and the necessity for the requested STA." 47 C.F.R. § 73.1635(a)(2).

⁹ According to the Response Letter, Chameleon's principal was also the principal of the subject programming supplier.

¹⁰ Whitehead contends that Chameleon's abandonment of the Bay City Site may have been voluntary. In documents associated with the above-referenced assignment of license from Landrum, we note that Chameleon assigned the rights of some portion of the Bay City Site back to Landrum. The Response Letter fails to address our question regarding what legal rights Chameleon has with respect to the Bay City Site, in view of that assignment of lease rights. Chameleon has also not responded to our query regarding the condition of the licensed Bay City Site's transmission facilities. We note, however, that the Commission's records indicate that Landrum was operating KFCC(AM) from that site at the time of the assignment of license to Chameleon.

day period for comment on the application by relevant parties. 47 U.S.C. § 309. To the extent that Chameleon's admitted "creative use" of the STA is an attempt to foreshorten the statutory procedures mandated by the Act, we decline to permit circumvention of those requirements by use of STA.¹¹

We further note that it is not our policy to authorize new construction intended to be for permanent operations pursuant to STA. The Commission staff rejected Chameleon's April 21, 1995 STA request because it proposed constructing a new permanent tower. Chameleon's amended May 2, 1995 exhibit had removed the term "new" and instead indicated that the tower to be used was an "existing" structure. We note, however, that the Response Letter provides conflicting dates as to when the tower was actually erected on the Harris County Site.¹² The Response Letter does state, though, that its "agreement" with the tower contractor to erect a tower on the Harris County Site was confirmed in a telephone conversation on April 26, 1995. Response Letter at 10. Therefore, we conclude that the tower was constructed sometime between April 26 and May 8, the date that Chameleon reports it began operations from the Harris County Site. Response Letter at 12. Because it appears that this tower was erected for the primary purpose of providing service under the STA, and with the intention of it becoming a permanent structure for operations (see May 2, 1995 letter from Chameleon), we find that extending the STA under such conditions would clearly violate our established STA policy.

We wish to address two remaining matters regarding the Response Letter. First, Chameleon states that "after very careful consideration that Mr. Werlinger made the decision to disregard [the Recession Letter]." Response Letter at 15. We caution Chameleon, and note herein, that pursuant to Section 503(b) of the Act unauthorized operation of a broadcast station can subject a licensee to forfeiture. Second, we note that Chameleon failed to address several specific questions in the Inquiry Letter. We remind Chameleon that it is a violation of Commission Rules to make a "willful material omission bearing on any matter within the jurisdiction of the Commission." 47 C.F.R. § 1.17. In any event, for the purposes of our determination as to whether the STA should be extended, we need not require additional information from Chameleon concerning aspects of that STA operation. However, with respect to our specific question concerning the specific present location of the KFCC(AM) main studio, we note that absent limited exceptions, a licensee may not remove a station's


¹¹ We note that Chameleon's subsequent filing of an FCC Form 301 application seeking a construction permit to build permanent facilities at the Harris County Site and to change KFCC(AM)'s community of license to Missouri City, Texas does not provide an independent basis supporting extension of the subject STA.

¹² At one point Chameleon states that "[b]y Monday, May 1, 1995 the Rohn model 25 tower was in place." Response Letter at 10. Subsequently, Chameleon states that "working nonstop, the Chameleon crew had the tower in the air by 8:30 pm, Saturday May 6." Response Letter at 24.

main studio outside of the station's principal community contour without first securing the appropriate authorization. See 47 C.F.R. § 1125(b). Second, if a main studio is relocated pursuant to Sections 1125(b)(3)(i), (ii), proper notification must be made to the Commission. See 47 C.R.R. § 1125(b)(3)(iii). If Chameleon has relocated the KFCC(AM) main studio under either circumstance noted above, Chameleon must promptly file the required information in conformance with 47 C.F.R. § 11.25(b)(3)(iii).

Conclusion. The objection filed by Tom S. Whitehead IS GRANTED to the extent indicated herein. The objection filed by South Texas Broadcasting, Inc. IS DISMISSED. The August 4, 1995 request for extension of STA filed by Chameleon Radio Corporation IS DENIED. Pursuant to 47 C.F.R. § 73.1635(a)(5)(b),¹³ the May 5, 1995 STA -- as modified by the Commission's letter of May 12, 1995 -- IS CANCELLED. KFCC(AM) must immediately cease operation from the Harris County Site. Further operation from the Harris County Site will subject Chameleon to daily forfeitures calculated in accordance with Section 503(b) of the Act. Station KFCC(AM) must resume operations from its licensed site in Bay City, Texas.¹⁴

Sincerely,


Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

cc: James P. Riley, Esquire
Counsel for South Texas Broadcasting, Inc.
John Joseph McVeigh, Esquire
Counsel for Tom S. Whitehead
CIB Houston

¹³ Pursuant to 47 C.F.R. § 73.1635(a)(5)(b), the Commission may modify or cancel without prior notice or hearing any STA.

¹⁴ We also remind Chameleon that 47 C.F.R. § 73.1740(a)(4) provides that licensees must seek authority from the Commission to remain silent within ten (10) days of the discontinuance of operations. Such authorizations pertain only to an applicant's licensed site. Requests for silent authority pursuant to this Rule must be supported by a showing that factors beyond the licensee's control prevent the continuance of on-air service.



713 760 - 6634
512 - 939-8501

MM 96-173
MMB

KFCC

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Chameleon Radio Corporation

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Houston's Unique Talk and International Language Station

September 22, 1995

Roy Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20554

Re: FCC letter of September 8, 1995 (1800B3-KDY)

Mr. Stewart:

This letter is tendered in response to a letter dated September 8, 1995 from the office of Larry Eads, Chief, Audio Services Division. However, in light of Mr. Eads' resignation effective October 1, 1995, this letter is being directed to your office.

Chameleon Radio Corporation ("Chameleon"), licensee of KFCC (AM) Bay City, Texas, respectfully requests the Commission's forbearance and reconsideration of its September 8, 1995 decision to cancel Chameleon's special Temporary Authority to broadcast from the Harris County site.

Section 309(f) of the Communications Act states "extraordinary circumstances requiring temporary operations in the public interest..." are allowed. The action taken by Commission staff in canceling Chameleon's STA completely ignores the extraordinary circumstances faced by Chameleon and detailed in its previous communications on the matter. Quite literally, Chameleon was faced with only two options, cease to exist thereby depriving the nearly three dozen international language communities served by KFCC of their only broadcast outlet, or find another venue from which to continue broadcasting.

Under provisions of Section 309 of the act, the "extraordinary circumstance" faced by Chameleon must be acknowledged, but in its September 8th letter, Chameleon's situation was completely ignored as were the needs of the international communities it serves.

The cancellation of Chameleon's STA was subjective, arbitrary, and capricious for several reasons. First, dozens of STA applications were granted in recent years to broadcasters who constructed new transmitter sites closer to cities much larger than their city of license. However, this occurred when May Bradfield was in the position of determining which STA requests were granted. Policies regarding STA's changed dramatically when Ms. Bradfield was moved to another branch within the Commission and Mr. John Vu assumed Ms. Bradfield's responsibilities. Mr. Vu refused to authorize new tower construction even though he could not logically defend his position in the matter. It is clear; however, that a different bureaucrat produced different and quite arbitrary "rules."

The September 8th letter further states, "it is not our (the Commission's) policy to authorize new construction intended to be for permanent operations pursuant to STA. Again, we cite the common practice of allowing new antenna construction under Ms. Bradfield's guidelines and the contrasting prohibition now. As stated in the September 8th letter, this policy flies in the face of common sense. Instead, the policy should directly encourage such construction as long as the site is intended to be made the permanently licensed site. Only from such a site, or one licensed within three kilometers of it, can field strength readings be taken which are essential to establishing true ground conductivity from a new site thus allowing for the most efficient use of the spectrum.

Such construction also conserves the resources of the licensee since antenna construction can be made part of a permanent license later, thus saving additional construction expense, not to mention land acquisition, potential zoning problems, environmental damage, etc.

In addition to ignoring the needs of Houston's international community as well as Chameleon's extraordinary circumstances, Commission staff appears to imply in its September 8th letter that something was morally wrong Chameleon's STA operation. This is obvious from the last sentence in paragraph one of page five of the September 8th letter wherein the Commission dismisses the obligations and responsibilities of Chameleon to its programmers and instead complains that such a move deprives Bay City of a "licensed service it has *enjoyed* (emphasis added) for more than forty years." This advocacy of the old Bay City site is curious and remarkable in light of the fact that KFCC (formerly KIOX) had spent most of the last several years in a simulcast operation with its sister FM station and was considered "nothing but a liability" by its previous licensee and except for one weekend programmer was providing no local service to its city of license.

Cancellation of the STA at this point would destroy not only Chameleon's business enterprise, but also more than thirty other business entities; the programmers on KFCC.

Since commencement of operations from its STA site, KFCC has provided a service to communities that heretofore were completely unserved in one of the nation's largest metropolitan areas. All programmers on the station (Greek, Russian, Pakistani, Indian, etc.) support their programming efforts through the sale of commercial time and supply daily news, religious, and entertainment events to their respective communities. A blind cancellation of the STA fewer than 30 days prior to the cutoff date of Chameleon's currently pending 301 is completely illogical. It will destroy every one of these businesses.

Cancellation of the STA makes no sense from a technical standpoint either. The 300 watt STA operation of KFCC reduces rather than increases overlap to KWHI at Brenham, Texas. While a very minor amount of new overlap is created by the STA of KFCC, it is more than offset by the nearly 50% reduction in previously licensed overlap in other areas. In fact, as presently constituted, KFCC's STA complies with the spirit of MM Docket 87-267 in that first channel overlap which has been in place for more than 30 years is reduced by the nearly 50% as indicated above.

Cancellation of the STA also greatly jeopardizes the possibility that Chameleon would be able to construct permanent facilities sought in its currently pending application (BP-950804AC) which will eliminate virtually all the previously licensed overlap between the two stations.

In conclusion, KFCC's STA operation provides a needed service previously unavailable anywhere in southeast Texas. It is not merely another music or talk outlet but a unique vehicle for discriminating information to hundreds of thousands of legal immigrants from five different continents, and this is occurring on a radio station that previously had provided virtually no local service to its community.

Chameleon has shown good faith in proposing to make its site permanent and stands ready to construct the new facilities immediately upon approval of the Construction Permit sought in application BP-950804AC. The acceptance for filing and placement of the application on an October 6, 1995 cutoff clearly indicates the proposed facilities of KFCC meet the Commission's requirements and standards. Cancellation of the STA at this time, only weeks before cutoff is illogical, and counterproductive. It threatens the survival of Chameleon and its many programmers. Finally, the overall overlap situation with KWHI at Brenham, Texas is in fact, improved by KFCC's STA operation.

In light of the above, Chameleon respectfully requests the Commission's forbearance and reconsideration of its September 8th letter pending approval of its form 301 request to make the site permanent.

Respectfully submitted,


Don Werlinger, President

cc: Honorable Ken Bentsen
U.S. House of Representatives

Honorable John Bryant
U.S. House of Representatives

Honorable Gene Green
U.S. House of Representatives

Honorable Ralph Hall
U.S. House of Representatives

Honorable Greg Laughlin
U.S. House of Representatives

Honorable Sheila Jackson-Lee
U.S. House of Representatives

Honorable Charlie Wilson
U.S. House of Representatives

Honorable Reed Hundt, Chairman ✓
Federal Communications Commission

KFCC Public Inspection File

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
AM BROADCAST STATION LICENSE

MM 96-123
File No. : BZ-940715AC

Call Sign : KIOX

LICENSEE: North Star Communications, Inc.

1. Community of License... : Bay City, Texas
2. Transmitter location.... : State Hwy 35 east,
2 miles from city
limits, Bay City, TX

North Latitude..... : 28° 59' 51"
West Longitude..... : 95° 54' 42"

6. Antenna and ground system:
Attached

3. Transmitter(s): Type Accepted. See Sections 73.1660,
73.1665 and 73.1670 of the Commission's rules)
4. Main Studio Location: (See Section 73.1125)
State Hwy 35 east, 2 mi. from
city limits, Bay City, TX
5. Remote control location

7. Obstruction marking and lighting specifications - FCC Form 715, paragraphs: 1, 3, 12 & 21.

8. Frequency..... : 1270 kHz

9. Nominal power (kW)..... : 1.0 Day 1.0 Night

Antenna input power (kW) :

1.0 Day ☒ Non-directional antenna : current 1.97 amperes: resistance 257 ohms.
☐ Directional antenna :

1.08 Night ☐ Non-directional antenna : current 4.65 amperes: resistance 50 ohms.
☒ Directional antenna :

10. Hours of operation : Previously authorized

Conditions..... :

Subject to the provisions of the Communications Act of 1934, as amended, subsequent Acts, Treaties, and Commission rules made thereunder, and further subject to conditions set forth in this license,¹ the LICENSEE is hereby authorized to use and operate the radio transmitting apparatus herein described for the purpose of broadcasting for the term ending 3 A.M. Local Time

August 1, 1997

The Commission reserves the right during said license period of terminating this license or making effective any change, or modification of this license which may be necessary to comply with any decision of the Commission rendered as a result of any hearing held under the rules of the Commission prior to the commencement of this license period.

The license is issued on the licensee's representation that the statements contained in the licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. This license is subject to the right of control by the Government of the United States conferred by section 806 of the Communications Act of 1934, as amended.

EAL:rao

FEDERAL
COMMUNICATIONS
COMMISSION



¹ This license consists of this page and pages 2 & 3

Dated: SEP 28 1994

June 1980

File No.: BZ-940715AC

Call Sign: KIOX

1. **DESCRIPTION OF DIRECTIONAL ANTENNA SYSTEM**

No. and Type of Elements: Three series-excited vertical radiators. Elements N(#1) and C(#2) are uniform cross-section, guyed, S(#3) is tapered and guyed.

Theoretical RMS: 321.87 mV/m at 1 km, night. Augmented RMS: 340.45 mV/m at 1 km, night. $Q = 10$, night.

Height above Insulators: 76.2 m (116°)

Overall Height: 77.74 m

Spacing and Orientation: 108.54 m (165°) between adjacent towers. Line of towers bears 342° true.

Non-Directional Antenna: N(#1) tower. (323.48 mV/m/kw at 1 km, day)

Ground System consists of 120-76.22 m buried copper radials plus 120-15.24 m radials about towers N(#1) and C(#2). Tower S(#3) 120-76.22 m buried copper radials plus a 18.29 m x 18.29 m ground screen. A 10.16 cm copper strap connects the tower, transmitter, and along the line of intersection of the radials.

2. **THEORETICAL SPECIFICATIONS**

Towers:	N(#1)	C(#2)	S(#3)
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Phasing:	Night: -35°	0°	35°
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Field Ratio:	Night: 0.51	1.0	0.51
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3. **OPERATING SPECIFICATIONS**

Phase Indication*:

Night:	32°	0°	-21.5°
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Antenna Base

Current Ratio:

Night:	0.5	1.0	0.74
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Antenna Monitor Sample

Current Ratio:

Night:	0.515	1.0	0.7
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* As indicated by Potomac Instruments AM-19 (204) Antenna Monitor.

File No: BZ-940715AC

Call Sign: KIOX

DESCRIPTION OF AND STRENGTH OF MONITORING POINTS:

Direction of 12° True North. From the KIOX entrance road, turn right on Highway 35 and proceed for 2.15 miles. Turn left, and proceed for 2.1 miles. Distance to antenna is 3.7 miles. The field intensity measured at this point should not exceed 2.89 mV/m.

Direction of 162° True North. From the KIOX entrance road turn left on Highway 35 and proceed for 1.9 miles to intersection of Highways 35 and 457. Turn left on Highway 457 and proceed for 2.8 miles. Turn right and proceed for .5 mile. Distance from antenna is 1.85 miles. The field intensity measured at this point should not exceed 38 mV/m.

Direction 265° True North. From the KIOX entrance road, turn left on Highway 35, proceed for 2.7 miles to Nicholls Avenue. Turn right on Nicholls Avenue and proceed for .6 miles; turn left and proceed 0.2 miles; turn right for .1 mile to a point behind the Church parking lot. Distance to antenna is 2.7 miles. The field intensity measured at this point should not exceed 88.35 mV/m.

Direction of 342° True North. From the KIOX entrance road, turn right on Highway 35 and proceed 2.15 miles, turn left and proceed 3.6 miles then turn left and proceed .4 mile. Turn right and proceed for .5 mile; turn left and proceed .7 mile; turn right and proceed 1.0 mile; turn right and proceed for .25 mile, then left and proceed .1 mile. Distance to antenna is 5.35 miles. The field intensity measured at this point should not exceed 1.6 mV/m.

For 10 AM meeting

Middle Islands Office
6584 1000

MM 96-173

OCT 6 11 35 AM '95

—In The
UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

CHAMELEON RADIO CORP.
10865 Rockley Road
Houston TX 77099

Plaintiff

v.

FEDERAL COMMUNICATIONS
COMMISSION
1919 M. Street N.W.
Washington DC

Defendant

#95-1517
Filed 10/06/95

Civil Action No 95

Judge

NOTICE OF APPEAL

Chameleon Radio Corporation ("Chameleon") pursuant to 47 U.S.C. Sec. 402 (b), hereby appeals the Notice of Special Temporary Authority Cancellation issued by the Federal Communications Commission ("FCC") on September 8, 1995, a copy of which is attached hereto as Exhibit 1. The decision contained in the September 8, 1995 letter notice is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, under 5 U.S.C. Sec. 706 (2) (A).

Undersigned counsel was retained only yesterday upon arrival of a Federal Express package containing the relevant documents and files. Accompanying this notice of appeal is

COPY

a Motion to Stay the September 8, 1995 order until such time
as a full hearing on the merits has been held.

Respectfully submitted,

CHAMELEON RADIO CORPORATION



Charles Cervantes, DC Bar No. 238345
Adrian Cronauer, DC Bar No. 427503

Its Attorneys

October 6, 1995

MALONEY & BURCH
Suite 1200
1100 Connecticut Ave., NW
Washington, DC 20036-4101
202/293-1414

In The
UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

CHAMELEON RADIO CORP.
10865 Rockley Road
Houston TX 77099

Plaintiff

v.

FEDERAL COMMUNICATIONS
COMMISSION
1919 M. Street N.W.
Washington DC

Defendant

Civil Action No 95 _____


Judge _____

**MOTION TO STAY OR ENJOIN ORDER OF SEPTEMBER 8, 1995
TO CANCEL PREVIOUS ORDER GRANTING SPECIAL TEMPORARY
AUTHORITY AND TO CEASE OPERATIONS**

Plaintiff, Chameleon Radio Corporation, moves this court to enter an order staying the Federal Communications Commission (FCC) from enforcing any and all orders rescinding the FCC's grant to Plaintiff of a Special Temporary Authorization of May 5, 1995 until such time as there is a full hearing on the merits.

Respectfully submitted,

CHAMELEON RADIO CORPORATION


Charles Cervantes, DC Bar No. 238345
Adrian Cronauer, DC Bar No. 427503

Its Attorneys

October 6, 1995

MALONEY & BURCH
Suite 1200
1100 Connecticut Ave., NW
Washington, DC 20036-4101

202\293-1414

In The
UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

CHAMELEON RADIO CORP.
10865 Rockley Road
Houston TX 77099

Appellant

v.

FEDERAL COMMUNICATIONS
COMMISSION
1919 M. Street N.W.
Washington DC

Appellee

Civil Action No 95 _____

Judge _____

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF Appellant'S MOTION
TO STAY OR ENJOIN ORDER OF SEPTEMBER 8, 1995
TO CANCEL PREVIOUS ORDER GRANTING SPECIAL TEMPORARY
AUTHORITY AND TO CEASE OPERATIONS

Appellant moves this Honorable Court to: 1) enter an Order staying the FCC Order of September 8, 1995 which cancelled its previous order granting a Special Temporary

Authority (STA) or, in the alternative; 2) enjoin the FCC from enforcing the rescission of its Order of May 5, 1995 wherein the FCC granted to Appellant a Special Temporary Authority (STA); or 3) enjoin the FCC from taking any other adverse action against Appellant pending a hearing and final decision on this matter.

Undersigned counsel was retained only yesterday upon arrival of a Federal Express package containing the relevant documents and files.

I. STANDARD OF REVIEW

The factors to be considered in deciding whether to grant or deny Appellant's Motion are derived from Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (DC Cir. 1958), and its progeny. Those factors are: 1) the likelihood of prevailing on the merits; 2) whether the movant will suffer irreparable injury for which there is no adequate remedy at law; 3) the balancing of the hardships and whether third parties will be harmed; and 4) where lies the public interest. While each factor is discussed below separately, the combined conclusions warrant a finding that the FCC Order of September 8, 1995 should be stayed and enforcement enjoined pending the hearing of this motion on the merits and judgment thereon.

II. FACTUAL BACKGROUND

Appellant, Chameleon Radio Corporation (Chameleon) purchased the AM portion of KIOX, AM and FM, Bay City, Texas, in April, 1995. At the same time, Chameleon applied for a new call sign: KFCC. On April 21, 1995, Chameleon applied to the Commission for and on May 5, 1995, it was granted a Special Temporary Authorization (STA) to move its transmitter site. Exhibit 1. The new transmitter site relieves a first adjacency overlap with station KWHI. The new transmitter site also increases the station's grade B contour over Houston, Texas from approximately 10% to 80%.

Relying on this granted authorization, Chameleon secured rights to a new transmitter site and went on the air with an authorized power of 1,000 watts daytime, and 100 watts at night.

On May 12, 1995, in response to complaints that KFCC's new transmitter site produced interference with other stations, the Commission revised the STA to provide for a reduced authorized power of 300 watts daytime and 50 watts at night. Exhibit 2.

On May 18, 1995, the FCC's AM Bureau notified Chameleon that it was rescinding the previously granted STA because, with the lower authorized power, the station no longer covered its city of license, Bay City. Exhibit 3.